

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ANGELA L THUMAN  
PO BOX 139  
COLLEGE SPRINGS IA 51637-0139

CASEY'S MARKETING COMPANY  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03093-CT  
OC: 02/12/06 R: 01  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Angela Thuman filed an appeal from a representative's decision dated March 9, 2006, reference 02, which denied benefits on a finding that she was still employed by Casey's Marketing Company under the same terms and conditions as hired. After due notice was issued, a hearing was held by telephone on April 5, 2006. Ms. Thuman participated personally. The employer participated by Steve Strong, Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Thuman began working for Casey's on

March 24, 2005. She was hired to work from 20 to 30 hours each week as a donut and pizza maker. She was usually scheduled to report for work at 4:30 a.m. She was five to ten minutes late on numerous occasions. The manager spoke with her about her tardiness but she continued to report for work late. The tardiness was usually due to oversleeping.

Because of the amount of time she was missing from work, Ms. Thuman was asked whether she wanted to go to "on-call" status. She agreed to do so but was not required to as a condition of continued employment. Ms. Thuman knew that, as an "on-call" worker, there might be weeks in which she would not be called to work. As of the date of the hearing herein, she had only worked one weekend since changing her status.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Thuman is entitled to job insurance benefits on her claim filed effective February 12, 2006. She was unemployed at that point because she had chosen to become an "on-call" employee. She had the choice of remaining a scheduled employee but opted to change her status. Ms. Thuman knew that work might be sporadic after she changed her status. She acknowledged during the hearing that she knew she might not be called at all some weeks.

Inasmuch as it was Ms. Thuman's decision to accept fewer hours of work from the employer, she is voluntarily unemployed or underemployed. Therefore, she is not entitled to job insurance benefits.

#### DECISION:

The representative's decision dated March 9, 2006, reference 02, is hereby affirmed. Ms. Thuman is not eligible to receive job insurance benefits because she is voluntarily unemployed.

cfc/pjs